The Staten Island Hotel Limited Partnership d/b/a The Staten Island Hotel *and* Leonora Devito

The Staten Island Hotel Limited Partnership d/b/a The Staten Island Hotel *and* New York Hotel and Motel Trades Council, AFL–CIO. Cases 29–CA–18064 and 29–CA–18271

August 29, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

On April 17, 1995, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Staten Island Hotel Limited Partnership d/b/a The Staten Island Hotel, Staten Island, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER COHEN, concurring.

As set forth in the dissent in *Canteen Co.*, 317 NLRB 1052 (1995), I would find that a successor employer has an obligation to bargain over initial terms *if*, inter alia, it fails to announce to the predecessor employees, prior to or simultaneously with an unconditional offer of hire, that the initial terms will differ from those of the predecessor. Here, the Respondent failed to establish that it informed the predecessor's employees of the new terms. Thus, I agree that the Respondent was not privileged to set new terms unilaterally and that the make-whole remedy must be based on the predecessor's terms.[1]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We also find that the witness testimony relied on by the Respondent in support of its exceptions was implicitly discredited by the judge.

The Respondent has also excepted to the judge's decision asserting that it evidences bias and prejudice. On our full consideration of the entire record in these proceedings, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated impermissible bias against the Respondent in his analysis and discussion of the evidence.

April M. Wexler, Esq., for the General Counsel.
Joseph S. Rosenthal, Esq. and *Jacqueline I. Meyer, Esq. (Bondy & Schloss),* of New York, New York, for the Respondent.
Barry N. Saltzman, Esq. (Richards & O'Neil), of New York, New York, for the Union.

[1] The evidence shows that, but for the Respondent's discriminatory practices, it would have hired its entire complement of employees from the predecessor's employees. See *Canteen Co.*, supra at fns. 5 and 6 of the dissent.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in New York City on November 14, 15, 16, and 21, 1994,[1] and on January 30, 1995. Upon charges filed on March 16 and May 25, a consolidated complaint was issued on May 31, 1994, alleging that The Staten Island Hotel Limited Partnership, d/b/a The Staten Island Hotel (Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by the parties on December 23, 1994. A supplemental memorandum was filed by the General Counsel on February 22, 1995, and a supplemental brief was filed by Respondent on February 24, 1995.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a limited partnership with its principal office and place of business in Staten Island, New York, operates a hotel. Respondent admits, and I so find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted and I find, that New York Hotel and Motel Trades Council, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

In 1991 Bruce Behrins was appointed receiver of the Holiday Inn of Staten Island (Statland). Behrins operated the hotel under the receivership until January 31, 1994. During this time Behrins employed Quest Management to manage

[1] All dates refer to 1994 unless otherwise specified.

the hotel. Christien Ducker served as managing agent. On February 1 Respondent took over the premises and installed Stanley Friedman as the managing agent. The hotel was closed for renovations from February 1 until March 1. The employees of Statland, including front desk employees, switchboard operators, room attendants, and maintenance employees, were represented by the Union and its various member locals. They were covered by one collective-bargaining agreement between the Union and Hotel Association of New York City, Inc., an employer association that bargained on behalf of Statland, in a single unit. While the hotel was in receivership the receiver honored the collective-bargaining agreement between the hotel and the Union.

2. Role of Stanley Friedman

Stanley Friedman, a former deputy mayor of New York City and Bronx Democratic county chairman served a prison sentence, which ended in 1992. As he was about to be released from prison, Gene Prescott, a long-time friend, invited him to join his company ''to look for new acquisitions.'' In 1993 it came to Friedman's attention that the Holiday Inn of Staten Island was in receivership. Friedman discussed with Prescott the possibility of buying the property. During 1993 Prescott decided to put in a bid to purchase Home Savings Bank's interest in the hotel. The contract was executed on December 7, 1993.

Behrins credibly testified that in November 1993 Friedman telephoned him and introduced himself as ''a principal in the entity that was purchasing the hotel.'' Friedman asked Behrins to ''think about terminating'' the employees. Behrins credibly testified that in December 1993 Friedman again telephoned and told him that they were going to close the deal with the bank and asked Behrins to ''terminate the employees.'' Behrins replied that he would not do so.

Christien Ducker appeared to me to be a credible witness. As stated above, she had been serving as managing agent of the hotel under the receivership. She credibly testified that on January 26, 1994, Friedman telephoned her and told her to recommend to the employees that if they had any questions about the hotel's closing, ''they should contact their union delegates and have their union delegates contact Mr. Friedman directly.'' On January 27 she met with Friedman to discuss the employees and give her recommendations. She credibly testified:

> When I got through Lee DeVito and I said . . . I thought she was excellent and she was good for front desk manager position, but she was union delegate. And Mr. Friedman said that that settled it, that he wasn't going to hire anybody from the union.

Friedman became General Manager of the hotel on July 1. Respondent contends that until that time Friedman was merely a ''trainee'' and was not involved in the hiring process. I find Respondent's contention hard to believe. In November 1993 when Friedman called Behrins he introduced himself as ''a principal in the entity that was purchasing the hotel.'' Behrins also credibly testified that in November 1993 Friedman asked him to consider terminating the employees and in December he asked him to actually terminate the employees. Although Friedman testified that he asked Behrins to terminate the employees at the time Respondent took title, the fact that Friedman asked that the employees be terminated, whether in December or a month later, is hardly a request that would be made by a ''trainee.''

Respondent's answer admitted paragraph 6(a) of the complaint that states ''Stanley Friedman is now and has been at all times material herein, the Managing Agent of Respondent, and an agent thereof, acting on its behalf.'' As Friedman testified, after the contract was signed on December 7, 1993, Prescott told him ''you really want to work full-time. This is your baby. You found it.'' Although the testimony is unclear whether certain employees were hired by Friedman or Alfred Wiles, Friedman stated in an affidavit submitted to the Board that he, together with Wiles, were ''involved in the hiring of . . . supervisory personnel.''

Friedman located the property and suggested it to Prescott. After the contract was signed Prescott told Friedman you ''found'' it, this is your ''baby.'' When Friedman telephoned Behrins in November 1993 he introduced himself as the ''principal in the entity purchasing the hotel.'' Although Friedman may have been learning the procedures in running a hotel he was hardly a mere ''trainee.'' I credit Ducker's testimony that Friedman told her that ''he wasn't going to hire anybody from the union'' and find that he was acting as an agent of Respondent and that this statement is attributable to Respondent.

3. Statements of Buraus

Donald Buraus, an employee of the hotel while it was under receivership, was hired by Respondent as chief engineer. Leonora DeVito, a former front desk clerk of the hotel and formerly a shop steward, credibly testified that she had a conversation with Buraus on February 3. She stated that they were talking about the Union and Buraus told her ''they were only hiring 18 people and none of them would be union, or anybody that was there a long time, especially shop stewards.'' The Union began picketing at the hotel on February 23. DeVito credibly testified that during the second week of March, Buraus came to the picket line and told several of the persons on the picket line that Respondent ''wouldn't hire any union workers, anybody there for many years . . . especially shop stewards.'' Similarly, Edward Sabella, a former maintenance employee and former shop steward, testified that in March, while he was on the picket line, Buraus told several of the persons on the line ''[Y]ou know, you're not going to get your jobs back.'' After Sabella asked, ''[W]hat are you talking about'' and said, ''[W]e filled out applications there,'' Buraus answered, ''[O]h, no, especially you guys . . . any shop stewards or Union delegates, they're not taking you guys back cause they don't want any Union in this place . . . .'' Doris Long, a former room attendant and union delegate, corroborated this testimony. The complaint, as amended, alleges that on February 3, and again in March, Buraus informed employees that Respondent would not hire any employees who were union delegates. I have credited the testimony of DeVito, Sabella, and Long and find that on February 3, and again in March, Buraus informed employees that Respondent would not hire any employees who were union delegates.

4. Applications

During February Respondent ran newspaper advertisements that it would be accepting applications for positions at the hotel from February 15 through February 17. DeVito credibly testified that she filled out an application on the first day that Respondent was taking applications and that ''a whole bunch of us went down there on the first . . . Tuesday they were taking applications.'' Respondent's witness, Angela Rees, testified that she received ''maybe 25'' applications from former employees. After Doris Long testified that she mailed the application to Respondent, Respondent's counsel, Joseph Rosenthal, stated, ''[W]e stipulate that we received this woman's application.'' Rosenthal continued:

> If you had given me a list of all of them and asked me to stipulate, I would have done that too . . . the issue is not whether we received, the issue is whether or not we refused to consider hiring them.

In its initial brief Respondent stated for the first time ''General Counsel's presentation of the case is fatally flawed because no evidence was presented that 27 of the paragraph 12 employees ever applied for a job with Respondent.'' On the other hand, the General Counsel's initial brief stated, ''it is indisputed that . . . a majority of the former employees submitted applications to Respondent for employment.'' On December 30 I issued an Order, stating in pertinent part:

> It is apparent that General Counsel and Counsel for Respondent take differing views of Mr. Rosenthal's statement. In order to resolve the ambiguity, I believe it is necessary to reopen the record for the sole purpose of either receiving into evidence a written stipulation concerning the above or adduce testimony or exhibits at a further hearing.

The parties were not able to agree to a stipulation and accordingly on January 30, 1995, the hearing was reopened for the ''sole purpose of adducing evidence concerning applications submitted by the former employees.''[2] At the start of the hearing the General Counsel requested the production of documents that had been subpoened from Respondent. Specifically, the General Counsel requested ''all applications for employment received from former employees of the Staten Island Hotel from January 31, 1994 to present.'' Respondent moved to quash the subpoena, which I denied. Respondent refused to produce the applications.

I credit the testimony of DeVito, Dorothy Spearman, and Long that between 30 and 40 former employees submitted applications for employment. They credibly testified that they personally saw all but eight[3] of the former employees filling out applications for employment. They did not see, however, the following eight employees fill out applications: Terry Benway, James Brown, Tina Carlson, Brunilda Feal, Colleen Kenny, George Nyonde, Joseph Pedre, and Eva Vasser. The General Counsel has asked that I draw an adverse inference by virtue of the fact that Respondent refused to comply with the subpoena. In *Auto Workers v. NLRB*, 459 F.2d 1329, 1338 (D.C. Cir. 1972), the court stated:

> But while the adverse inference rule in no way depends upon the existence of a subpoena, it is nontheless true that the willingness of a party to defy a subpoena in order to suppress the evidence strengthens the force of the preexising inference. Indeed, in some circumstances the defiance of a subpoena may justify striking a defense . . . . The reason why existence of a subpoena strengthens the force of the inference should be obvious. If a party insists on withholding evidence even in the face of a subpoena requiring its production, it can hardly be doubted he has some good reason for his insistence on suppression. Human experience indicates that the most likely reason for this insistence is that the evidence will be unfavorable to the cause of the suppressing party.

I note counsel for Respondent's original statement on the record that ''the issue is not whether we received, the issue is whether or not we refused to consider hiring'' the former employees. I have credited the testimony of DeVito, Spearman, and Long that they personally saw all but eight of the former employees filling out applications for employment. I further note that at no time did Respondent deny that the former employees submitted applications. With respect to the eight former employees mentioned above, I draw an adverse inference and conclude that the ''most likely reason'' for Respondent's refusal to produce the applications is that the ''evidence will be unfavorable to the cause of the suppressing party.'' See *Auto Workers v. NLRB*, id.

5. Refusal to consider for employment and refusal to hire

The complaint alleges that Respondent refused to consider for employment 30 former employees of Statland and it has refused to hire 15 of them to fill 15 available positions. I have already found that on January 27 Friedman told Ducker that ''he wasn't going to hire anybody from the union.'' I have also found that on February 3 Buraus told DeVito that ''they were only hiring 18 people and none of them would be union, or anybody that was there a long time, especially shop stewards.'' Long and DeVito were former front desk employees and former shop stewards. Although Ducker highly recommended them, they were not hired by Respondent. In addition, Wiles testified that the predecessor hotel had been operating ''poorly,'' that ''it was not being managed well'' and that the ''physical condition of the hotel was unacceptable.'' When asked whether he considered the recommendations that Ducker gave to Friedman, he testified, ''given the unacceptable management that I observed at the hotel prior to our acquisition, I placed no weight on those comments or that list and therefore did not use that list in the hiring process.'' Yet, Wiles hired Baurus and Janice Chrystie, two former Statland managers. Thus, while supposedly Wiles was dissatisfied with the ''unacceptable management'' of the predecessor, he hired two of the former managers.

[2] Respondent filed a request with the Board for special permission to appeal my order reopening the record. On January 26, 1995, the Board affirmed the order to reopen the record.

[3] The General Counsel's supplemental memorandum states that the three witnesses personally saw ''all but six'' of the former employees submitting applications. In addition to the six employees specified in General Counsel's memorandum, I do not find in the record that the witnesses specifically identified Terry Benway and George Nyonde as having submitted applications.

In addition, Baurus testified that he did not consider hiring Sabella because of arguments he had with him and because ''we always had a problem with his work.'' Although Baurus had recommended that Sabella be discharged, however, he in fact was not discharged. Furthermore, Baurus testified that in filling the maintenance position, he was looking for someone who had a fire safety certification and air conditioning experience. Although Sabella was fire safety certified and knew the air conditioning system at the Staten Island Hotel, he was not hired. Instead Vincent Martinucci, who was not fire safety certified and who did not know the air conditioning system at the Staten Island Hotel was hired. Rees, who interviewed applicants for housekeeping and front desk positions, was unclear about exactly what criteria she used in the hiring process. She appeared to make the incredulous assertion that neatness in filling out the application outweighed prior hotel work experience. In examining Respondent's arguments as to why it failed to hire the former Statland employees, I find that Respondent has not satisfied its burden of demonstrating that the ''same action would have taken place even in the absence of the protected conduct.'' See *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 663 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

6. Successorship

I find that Respondent refused to consider for hiring the former Statland employees because of their union membership and in order to avoid a bargaining obligation with the Union. This constitutes a violation of Section 8(a)(1) and (3) of the Act. See *Shortway Suburban Lines*, 286 NLRB 323 (1987), enfd. 862 F.2d 309 (3d Cir. 1988).

In *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987), the Supreme Court held that in determining whether an employer is a successor, the focus is on whether there is a ''substantial continuity'' between the new and the prior enterprises The Court stated id. at 43:

> Under this approach, the Board examines a number of factors: whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers.

Respondent acquired the hotel and resumed operations after a 1-month hiatus for renovations. Respondent is engaged in the same business as Statland and operates at the same location. It provides the same services as its predecessor and employs some of the same supervisors. It has the same categories of jobs under the same or similar working conditions. But for Respondent's unlawful refusal to hire former Statland employees because of their union membership, a majority of Respondent's unit employees would have been former Statland employees. I find that Respondent is a successor to Statland and as such is obligated to recognize and bargain with the Union.[4] See *NLRB v. Burns Security Services*, 406 U.S. 272 (1972); *Love's Barbeque Restaurant*, 245 NLRB 78, 82 (1979), enfd. in relevant part 640 F.2d 1094 (9th Cir. 1981); *Shortway Suburban Lines*, supra, 286 NLRB at 328.

7. Unilateral changes

A successor employer is ordinarily free to set the initial terms on which it will hire the predecessor's employees. This rule does not apply, however, when the successor has unlawfully failed to hire those employees because of their union affiliation. *Shortway Suburban Lines*, supra, 286 NLRB at 328; see also *Weco Cleaning Specialists*, 308 NLRB 310 (1992). Therefore, Respondent was not entitled to set the initial terms of employment without first consulting the Union. It is uncontested that Respondent did not bargain with the Union and unilaterally changed working conditions by eliminating the pension and welfare funds and other benefits provided by the collective-bargaining agreement between Statland and the Union. By making these unilateral changes Respondent violated Section 8(a)(1) and (5) of the Act. See *Love's Barbecue Restaurant*, supra, 245 NLRB at 82.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The following employees employed by Respondent at its Staten Island facility constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

> Front desk clerks, desk clerks, housemen, room attendants, laundry employees and maintenance employees, excluding executives, superintendents, department managers, assistant department managers, guards and supervisors within the meaning of the Act.

4. At all times material herein the Union has been the exclusive representative of the employees in the above-described unit for the purposes of collective bargaining within the meaning of the Act.
5. By refusing to hire employees formerly employed by its predecessor, Statland Holiday Associates, because of their union affiliation, and to avoid an obligation to bargain with the Union, Respondent has violated Section 8(a)(1) and (3) of the Act.
6. Respondent is a successor employer to Statland Holiday Associates and by failing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees of the above unit, and by making unilateral changes without prior notification to and consultation with the Union, Respondent has violated Section 8(a)(1) and (5) of the Act.

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[4] On February 3 Union Attorney Vincent Pitta requested that Respondent recognize and bargain with the Union. Joseph Rosenthal, on behalf of Respondent, denied the request. Respondent contends that since, at the time the request was made Respondent was under no obligation to bargain, Respondent did not violate the Act by refusing to bargain at that time ''or thereafter.'' I disagree. I believe that the Union's request for recognition and bargaining is deemed to be continuing in nature. See *Scotts IGA Foodliner*, 223 NLRB 394, 413 (1976), enfd. mem. 549 F.2d 805 (7th Cir. 1977); *Highland Plastics, Inc.*, 256 NLRB 146, 164 fn. 76 (1981).

7. By informing employees that Respondent would not hire any employees who were union delegates Respondent has violated Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent refused to consider for hiring and refused to hire former employees of Statland Holiday Associates, I shall order that Respondent offer to the employees listed below immediate and full employment, without prejudice to their seniority and other rights previously enjoyed, discharging if necessary any employees hired in their place. If Respondent does not have sufficient positions available the remaining employees shall be placed on a preferential hiring list. The below listed employees[5] shall be made whole for any loss of earnings they may have suffered due to the discrimination practiced against them. The backpay period commences on March 1, 1994, and shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[6]

In addition, I shall order the Respondent to cancel, on request by the Union, unilateral changes in rates of pay and benefits or other terms and conditions of employment, and make the employees whole by remitting all wages and benefits that would have been paid absent such unilateral changes from March 1, 1994, until Respondent negotiates in good faith with the Union to agreement or to impasse. The remission of wages shall be computed as provided in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as prescribed in *New Horizons*, supra. Respondent shall also remit all payments it owes to the employee benefit funds and reimburse its employees for any expenses resulting from the failure to make these payments in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Any amounts that Respondent must pay into the benefit funds shall be determined in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). The employees are:

April Bedford	Carmen Gonzales
Olga Bencibi	Eunice Mattu Hall
Terry Benway	Colleen Kenny
Keith Blackman	Courteney Lewis
James Brown	Doris Long
Tina Carlson	Marie Marshall
Jimmy DeSouza	Connie Mehmedagic
Leonora DeVito	George Nyonde
Lola Diamontis	Joseph Pedre
Theresa Fasano	Edward Sabella
Brunilda Feal	Dorothy Spearman
Jason Fodor	Lillian Vincente
Linda Gardner	Eva Vasser
Evelyn Goodridge	Dee Wranovics

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, The Staten Island Hotel Limited Partnership, d/b/a The Staten Island Hotel, Staten Island, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire employees because of their union affiliation and to avoid an obligation to bargain with the Union.

(b) Refusing to recognize and bargain with New York Hotel and Motel Trades Council, AFL–CIO as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> Front desk clerks, desk clerks, housemen, room attendants, laundry employees and maintenance employees employed at Respondent's Staten Island facility, excluding executives, superintendents, department managers, assistant department managers, guards and supervisors within the meaning of Act.

(c) Unilaterally changing wages, hours, pension and welfare contributions, or any other term and condition of employment of its employees in the above unit without notifying and bargaining with the Union.

(d) Informing employees that Respondent would not hire any employee who was a union delegate.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to the employees listed below formerly employed by Statland Holiday Associates immediate and full employment without prejudice to their seniority and other rights previously enjoyed, discharging if necessary any employees hired in their place. If Respondent does not have sufficient

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[5] I find that two former Statland employees, Kevin Hefty, and Joseph Guerreri, were offered employment. I credit Burbridge's testimony that she offered the position of night auditor to Guerreri. The testimony was unrefuted. Similarly, Dogra credibly testified that she offered Hefty a job as houseman. Her testimony was also unrefuted.

[6] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. Sec. 6621.

Respondent contends that backpay should not be set at the wage rate paid by the prior employer. In *Shortway Suburban Lines*, supra at 286 NLRB at 329 fn. 36, the Board ordered backpay to be based on either the rate structure prevaling under the prior employer or the new rate structure established by Respondent, ''whichever results in the higher backpay to the individual employees.'' I recommend that the same formula apply in this proceeding. See *State Distributing Co.*, 282 NLRB 1048 (1987).

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

positions available the remaining employees shall be placed on a preferential hiring list. The employees are:

April Bedford	Carmen Gonzales
Olga Bencibi	Eunice Mattu Hall
Terry Benway	Colleen Kenny
Keith Blackman	Courteney Lewis
James Brown	Doris Long
Tina Carlson	Marie Marshall
Jimmy DeSouza	Connie Mehmedagic
Leonora DeVito	George Nyonde
Lola Diamontis	Joseph Pedre
Theresa Fasano	Edward Sabella
Brunilda Feal	Dorothy Spearman
Jason Fodor	Lillian Vincente
Linda Gardner	Eva Vasser
Evelyn Goodridge	Dee Wranovics

(b) Make whole, with interest, the above-named employees for any loss of earnings and benefits they may have suffered by reason of the Respondent's discrimination against them in the manner set forth in the remedy section above.

(c) Recognize and, on request, bargain collectively with the Union as the exclusive representative of its employees in the above-described unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody it in a signed agreement.

(d) Upon request of the Union cancel any changes from the rates of pay and benefits or other terms and conditions of employment that existed prior to January 31, 1994, and make the employees whole by remitting all wages and benefits that would have been paid absent such changes from March 1, 1994, until Respondent negotiates in good faith with the Union to agreement or to impasse in the manner set forth in the remedy section above.

(e) Preserve, and upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amounts owing under the terms of this Order.

(f) Post at its facility in Staten Island, New York, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to hire employees because of their union affiliation and to avoid an obligation to bargain with the Union.

WE WILL NOT refuse to recognize and bargain with New York Hotel and Motel Trades Council, AFL–CIO as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> Front desk clerks, desk clerks, housemen, room attendants, laundry employees and maintenance employees employed at our Staten Island facility, excluding executives, superintendents, department managers, assistant department managers, guards and supervisors within the meaning of the Act.

WE WILL NOT unilaterally change wages, hours, pension and welfare contributions, or any other term and condition of employment of our employees in the above unit without notifying and bargaining with the Union.

WE WILL NOT inform employees that we will not hire any employee who was a union delegate.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL offer to the employees listed below, formerly employed by Statland Holiday Associates, immediate and full employment without prejudice to their seniority and other rights previously enjoyed, discharging if necessary any employees hired in their place. If we do not have sufficient positions available, the remaining employees shall be placed on a preferential hiring list. The employees are:

April Bedford	Carmen Gonzales
Olga Bencibi	Eunice Mattu Hall
Terry Benway	Colleen Kenny
Keith Blackman	Courteney Lewis
James Brown	Doris Long
Tina Carlson	Marie Marshall
Jimmy DeSouza	Connie Mehmedagic
Leonora DeVito	George Nyonde
Lola Diamontis	Joseph Pedre
Theresa Fasano	Edward Sabella
Brunilda Feal	Dorothy Spearman
Jason Fodor	Lillian Vincente
Linda Gardner	Eva Vasser
Evelyn Goodridge	Dee Wranovics

WE WILL make whole the above-named employees for any loss of earnings and benefits they may have suffered by reason of the Respondent's discrimination against them, with interest.

WE WILL recognize, and upon request, bargain collectively with the Union as the exclusive representative of the employ-

ees in the above-described unit, with respect to rates of pay, wages, hours and other terms and conditions of employment, and if an understanding is reached, embody it in a signed agreement.

WE WILL, upon request of the Union, cancel any changes from the rates of pay and benefits or other tems and conditions of employment that existed prior to January 31, 1994, and make the employees whole by remitting all wages and benefits that would have been paid absent such changes from March 1, 1994, until we negotiate in good faith with the Union to agreement or to impasse.

THE STATEN ISLAND HOTEL LIMITED PARTNERSHIP D/B/A THE STATEN ISLAND HOTEL